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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,742	10/01/2003	Don Hannula	TYHC:0127/FLE (P0402S-01)	4922
52144 7590 03/23/2009 NELLCOR PURITAN BENNETT LLC ATTN: IP LEGAL 60 Middletown Avenue North Haven, CT 06473			EXAMINER WORRELL JR, LARRY D	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 03/23/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/677,742	Applicant(s) HANNULA ET AL.	
	Examiner Danny Worrell	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/08 & 12/07</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4-7, 19, 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over McConville (5826277) over Westbrook et al (US 6,811,538).

McConville (5826277) teaches the invention as claimed including an elastic segment (12) sized to fit around a wearer's head; and a non-elastic segment (20) being smaller than and attached with said elastic segment, said non-elastic segment sized to span a portion of said elastic segment when said elastic segment is stretched, said non-elastic segment being larger than said portion of said elastic segment it spans when said elastic segment is not stretched. However, the head band of McConville does not teach a sensor coupled to the headband. Westbrook teaches that headbands are used for holding sensors on a wearer's head. It would have been obvious at the time the invention was made to provide the McConville headband with a sensor in order to monitor the pulse rate and oximetry as shown by Westbrook.

Claims 8-13 are rejected under 35 U.S.C. 102(b) as being anticipated by over McConville (5826277) over Westbrook et al (US 6,811,538)

The combined teachings of over McConville (5826277) over Westbrook et al (US 6,811,538) set forth the invention as claimed. However, the inelastic segments of McConville

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are the small elements rather than the elastic segments being smaller. It would have been obvious to provide the elastic segment as smaller and the inelastic segment as sized to fit around the head since such an arrangement is merely a reversal of the parts and because such a change would work in the same manner and in order to provide a lower amount of elasticity due to the smaller amount of elastic in the headband.

Claims 2, 3, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McConville (5826277) in view of Westbrook et al (US 6,811,538) and further in view of German patent document 295 15 977.

McConville (5826277) teaches the invention substantially as claimed as set forth above in the rejection to claim 1. However, McConville (5826277) does not teach the specific closure set forth in claims 2 and 3. German patent document 295 15 977 teaches a closure mechanism as claimed. It would have been obvious at the time the invention was made to provide the closure mechanism of German patent document 295 15 977 on the headband of McConville (5826277) in order to allow size adjustment.

Conclusion

Applicant's arguments filed 7/16/07 have been considered. However, they are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danny Worrell whose telephone number is 571/272-4997. The examiner can normally be reached on MON-WED, FRI.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571/272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Danny Worrell/
Primary Examiner, Art Unit 3765